Supreme Court, U.S.
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No. 93-1358

In the Supreme Court of the United States

OCTOBER TERM, 1993

ERNEST JACKSON, SR., PETITIONER

v.

RAYMOND HOYLMAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

BARBARA C. BIDDLE
BRUCE G. FORREST
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion in finding excusable, under Federal Rule of Civil Procedure 6(b)(2), the failure of respondents' counsel to file a timely answer to the complaint.

2. Whether the district court erred in granting summary judgment in favor of respondents with respect to claims arising from the search of petitioner's home and from petitioner's arrest.

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OPINIONS BELOW

The opinion of the court of appeals after trial, Pet. App. 2-28, is unpublished, but the judgment is noted at 12 F.3d 212 (Table). The opinion of the court of appeals on the interlocutory appeal concerning summary judgment is reported at 933 F.2d 401. The opinion of the district court on summary judgment, Pet. App. 29-46, is unreported. The order of the district court allowing respondents to file an answer, Pet. App. 47-48, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 3, 1993. The petition for a writ of certiorari

was filed on February 25, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. When petitioner Ernest Jackson, Sr.'s son, Ernest Jackson, Jr., failed to appear in response to a summons for service as a grand juror, the federal magistrate judge issued a warrant for the arrest of "Ernest Jackson." Pet. App. 10, 61-62. After receiving the arrest warrant, respondents United States Marshals Raymond Hoylman and Robert Bidwell telephoned the number listed on the warrant as the last known residence and spoke to a man who identified himself as Ernest Jackson. Jackson told respondents that he would not go to the courthouse for jury duty and that they "would have to come get him." Pet. App. 4 (quoting *Jackson* v. *Hoylman*, 933 F.2d 401, 401-402 (6th Cir. 1991)).

Respondents arrived at petitioner's home approximately 15 minutes later and knocked on the doors, loudly announced themselves and the warrant, but received no response. Respondents entered the house and again shouted their identification and purpose but received no response. They found no one downstairs and proceeded upstairs where they found petitioner in his bedroom talking on the telephone. Pet. App. 4-5 (quoting *Jackson* v. *Hoylman*, 933 F.2d at 402).

The parties disagree about what occurred next. As the Sixth Circuit summarized the dispute:

> [Petitioner] describes an assault by officers using unnecessary and excessive force to effect the arrest of a frightened and peaceful citizen in his own bed. [Respondents] describe an arrest involving the use of only such force as was necessary to subdue a cursing, recalcitrant, struggling suspect resisting arrest. The only area of agreement is that the

> marshals forcefully restrained Jackson in order to handcuff him.

Jackson v. *Hoylman*, 933 F.2d at 402. After respondents handcuffed petitioner, they discovered that petitioner was not the Ernest Jackson named in the warrant, but that he was the father of that person. Respondents nevertheless arrested petitioner for assaulting a federal officer. *Ibid.* The grand jury refused to return an indictment. *Ibid.*

2. On March 2, 1989, petitioner filed this action pursuant to *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), in state court seeking damages from respondents for violation of his constitutional rights. Petitioner alleged violations of the Fourth and Fifth Amendments arising out of the warrantless search of his home and his arrest, and also alleged various state torts. Pet. App. 30. Respondents removed the case to federal court and obtained an extension of time until June 14, 1989, within which to respond to the complaint. *Id.* at 17. On June 9, respondents moved to dismiss or, in the alternative, for summary judgment, *ibid.*, thereby tolling the time within which the answer was due. See Fed. R. Civ. P. 12(a).

The district court granted summary judgment for respondents on petitioner's claims based on the search of his home and his arrest pursuant to the warrant for his son. Pet. App. 34-38. The court also dismissed the pendent state law claims. *Id.* at 43-45. The district court determined, however, that a factual dispute existed with respect to petitioner's claim of excessive force and that respondents, therefore, were not entitled to summary judgment on their qualified immunity defense to that claim. *Id.* at 38-43; *id.* at 7-8. Respondents pursued an

interlocutory appeal with regard to the district court's denial of summary judgment on the excessive force claim and qualified immunity defense, but the court of appeals affirmed. *Jackson* v. *Hoylman*, *supra*.

3. After remand to the district court, respondents filed a motion to dismiss which was denied on January 30, 1992. Pet. App. 18. On February 21, 1992, respondents filed a motion for leave to answer the complaint. *Ibid.* On February 27, petitioner moved for a default judgment which the court denied. *Id.* at 18, 55-60. The district court granted respondents' motion and respondents filed an answer on March 9, 1992.

The case proceeded to trial and the jury rendered a verdict for respondents on all issues. Pet. App. 8.

4. Petitioner appealed, contending that the trial court erred in granting summary judgment to respondents on his claims of illegal search and unlawful arrest pursuant to the warrant for his son. Petitioner also contended that the trial court abused its discretion in permitting respondents to file an answer to the complaint out of time. In addition, petitioner challenged certain evidentiary rulings (admission of evidence concerning petitioner's prior medical history, including a gunshot wound, and his prior misdemeanor arrests and convictions for assault) and jury instructions. Pet. App. 8-9.

The court of appeals affirmed. Pet. App. 2-28. The court held that the district court correctly granted judgment to respondents as a matter of law on the claim of unlawful arrest pursuant to the warrant for petitioner's son, because respondents were entitled to rely on the facially valid arrest warrant without incurring liability. *Id.* at 11-13 (relying on, *inter alia*, *Baker* v. *McCollan*, 443 U.S. 137 (1979)). The court also held that summary judgment was properly granted to respondents on the unlawful search claim under *Payton*

v. *New York*, 445 U.S. 573 (1980), because respondents had probable cause to believe that the Ernest Jackson named in the warrant lived at, and was then present at, the residence searched. Pet. App. 13-16. The court noted that petitioner argued for the first time on appeal that the search was illegal because the United States Magistrate did not have authority to issue the warrant. Pet. App. 16 n.4. The court found that the magistrate did have such authority under Federal Rule of Criminal Procedure 4, and 28 U.S.C. 1866(g), and ruled that, in any event, respondents were entitled under *Baker* to rely on the facially valid arrest warrant.

The court of appeals found that the trial court did not abuse its discretion when it allowed respondents to file a late answer to the complaint based on the particular circumstances of this case. Pet. App. 16-20 (citing *Pioneer Investment Services Co.* v. *Brunswick Assocs. Ltd. Partnership*, 113 S. Ct. 1489 (1993)). Finally, the court rejected petitioner's challenge to the trial court's evidentiary rulings and jury instructions. Pet. App. 20-27.

ARGUMENT

1. Petitioner contends (Pet. 25-29) that the court of appeals ignored a minimal requirement established in *Pioneer Investment Services Co.* v. *Brunswick Assocs. Ltd. Partnership*, 113 S. Ct. 1489 (1993), that a movant seeking an extension of time must provide a reason for the delay so that the reason can be considered as part of the relevant circumstances in determining whether to permit a late filing. Petitioner contends that the proffer of the "interests of justice" as support for respondents' motion to file a late answer was inadequate because acceptance of such a reason would render meaningless other provisions of Federal Rule of Civil Procedure

6(b)(2). Pet. 29. Petitioner contends that because respondents did not offer any excusable neglect or other reason for filing their answer out of time, his motion for default judgment should have been granted. *Ibid.*[1]

The court of appeals did not ignore the holding of *Pioneer Investment Services*, as petitioner contends. In fact, the court correctly cited that case (Pet. App. 20) in support of its ruling, noting that it concerned the bankruptcy rule patterned after Federal Rule of Civil Procedure 6(b). In *Pioneer Investment Services*, the Court analyzed Bankruptcy Rule 9006(b)(1), which authorizes a bankruptcy court to permit a late filing if the movant's failure to comply with the original deadline "was the result of excusable neglect." The Court expressly found that the Bankruptcy Rule was "patterned after Rule 6(b)" of the Federal Rules of Civil Procedure. 113 S. Ct. at 1496.[2] The Court also concluded that in light of the phrasing of Rule 6(b),

> [i]t is not surprising * * * that in applying Rule 6(b), the courts of appeals have generally recognized

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[1] Petitioner also relies on *Miller* v. *Lint*, 404 N.E.2d 752 (Ohio 1980), to support his argument that respondents should have been required to make more of a showing to support their motion to file a late answer. In *Miller*, however, the Ohio Supreme Court was construing Ohio Rule of Civil Procedure 6(B)(2), rather than Federal Rule of Civil Procedure 6(b)(2) which governed respondents' motion. 404 N.E.2d at 755.

[2] Rule 6(b) provides in relevant part:

> **Enlargement**. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion * * * (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect * * *.

> that "excusable neglect" may extend to inadvertent delays. Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute "excusable" neglect, it is clear that "excusable neglect" under Rule 6(b) is a somewhat "elastic concept" and is not limited strictly to omissions caused by circumstances beyond the control of the movant.

113 S. Ct. at 1496 (footnotes omitted). The Court did not establish any rigid requirement, as urged by petitioner, that a motion under Rule 6(b) must detail specific reasons for the delay. Rather, the Court specified that the determination of whether a particular movant's neglect is "excusable" is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." 113 S. Ct. at 1498. Such circumstances include the danger of prejudice to the other party, the length of delay and its impact on the judicial proceeding, whether the delay was within the control of the movant, and whether the movant acted in good faith. *Ibid.*

Consideration of the particular circumstances of the instant case correctly led the court of appeals to hold that the district court had not abused its discretion in allowing respondents' late filing of an answer. All of the factors identified in *Pioneer Investment Services* favored allowing the late filing of the answer in this case. Petitioner does not identify any prejudice suffered as a result of the late filing of the answer; petitioner had been put on notice of the factual and legal defenses respondents were raising through the various motions they

had filed;[3] the delay had no impact on the interests in efficient judicial administration; and the good faith of respondents and their counsel has not been questioned. Cf. *Pioneer Investment Services*, 113 S. Ct. at 1499.

2. Petitioner requests (Pet. 29-33) that the Court review this case to clarify its ruling in *Baker* v. *McCollan*, 443 U.S. 137 (1979), and hold that, under the Fourth Amendment, a person effecting an arrest pursuant to a warrant must have probable cause to believe that the person being arrested is the person named in the warrant. Petitioner contends that, unlike the situation in *Baker*, petitioner did not match the description in the warrant and respondents did not attempt to determine whether he matched the description until after they handcuffed him. Pet. 31-32. Petitioner concludes that the court therefore erred in granting summary judgment because, as a matter of law, respondents had no probable cause to believe he was the person named in the warrant. Alternatively, petitioner argues that the existence of such probable cause was a question for the jury to decide. Pet. 33.

Petitioner cites no authority supporting his contention that *Baker* should be modified.[4] In *Baker*, the

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[3] The district court and petitioner also were aware of the fact that respondents had pursued an interlocutory appeal in the meantime and had filed various dispositive motions.

[4] The only case cited by petitioner, *Powe* v. *City of Chicago*, 664 F.2d 639 (7th Cir. 1981) (Pet. 31), involved a warrant deemed invalid for failure to satisfy the particularity requirement of the Fourth Amendment because the law enforcement officers knew that the subject of the warrant used several aliases and they did not provide other adequate descriptive information in the warrant. *Id.* at 644-648. The *Powe* court acknowledged that *Baker* controls cases involving arrests pursuant to facially valid warrants. *Id.* at 644.

Court held that deprivation of a person's liberty is not unconstitutional if it results from an arrest pursuant to a facially valid warrant. The person arrested in *Baker* had been kept in police custody for several days despite his protestations of mistaken identity and the fact that the mistake was evident as soon as his appearance was compared to the file photograph of the wanted man (his brother). 443 U.S. at 140-141. The Court reasoned that the mistakenly arrested man did not suffer any constitutional violation, however, because his arrest was pursuant to a warrant that conformed to the requirements of the Fourth Amendment. *Id.* at 144. The Court emphasized that a law enforcement officer executing an arrest warrant is not required by the Constitution "to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." *Id.* at 146; see also *Masters* v. *Crouch*, 872 F.2d 1248, 1253 (6th Cir.), cert. denied, 493 U.S. 977 (1989).

The arrest warrant upon which respondents acted was facially valid. It identified a subject with the same name and address as petitioner. Only fifteen minutes prior to the altercation between petitioner and respondents, a person had answered the telephone number listed on the search warrant and told respondents that they would have to "come get him." Pet. App. 4 (quoting *Jackson* v. *Hoylman*, 933 F.2d 401, 401-402 (6th Cir. 1991)). The subsequent seizure of petitioner did not violate the Fourth Amendment under *Baker* and the court of appeals therefore correctly affirmed the district court's grant of summary judgment to respondents on this claim.

3. Petitioner asserts (Pet. 33-36) that the civil contempt warrant in this case could not have justified the residential search. Petitioner concedes (Pet. 33-34) that under *Payton* v. *New York*, 445 U.S. 573 (1980),

such a residential search is justified where law enforcement officers search the residence of the person named in a felony warrant for purposes of arresting the person. Petitioner argues (Pet. 34), however, that "historical and important public policy considerations" distinguish civil contempt proceedings from criminal proceedings and that, therefore, civil contempt warrants should not be treated the same as felony arrest warrants in regard to residential searches. Petitioner also asserts (Pet. 36), without amplification, that he had a separate Fourth Amendment interest under *Steagald* v. *United States*, 451 U.S. 204 (1981).

Petitioner does not cite any authority to support his proposition that because of "historical and important public policy considerations," civil contempt warrants should be treated differently from other warrants and not permit search of the residence of the person named in the warrant. Even if there were merit in imposing this rule, respondents cannot be charged with knowledge of a legal obligation that was not yet established at the time of the search. See *Anderson* v. *Creighton*, 483 U.S. 635 (1987).

The court of appeals correctly affirmed the district court's ruling that on the facts of this case respondents had reason to believe that the person named in the warrant lived at, and could be found at, the residence listed in the warrant at the time of the execution of the warrant. Pet. App. 14-15, 36-37 (citing *Maryland* v. *Garrison*, 480 U.S. 79, 85 (1987) (reasonableness of officers' conduct must be judged "in light of the information available to them at the time they acted")). In light of that finding, respondents' search of what they believed to be the residence of the person named in the warrant in order to arrest that person was appropriate under *Steagald*. Thus, the district court correctly

granted respondents' summary judgment motion on this issue.

4. Petitioner also argues (Pet. 36-37) that the United States Magistrate did not have authority under 28 U.S.C. 636(e) to issue the arrest warrant in this case. Petitioner contends that under that provision, the magistrate should have certified the facts to a district court judge and that only the judge was authorized to issue an arrest warrant for contempt. Petitioner acknowledges (Pet. 37) that the court of appeals correctly ruled that respondents were entitled to rely on the facially valid arrest warrant to arrest, but he contends that respondents should have been required to show a good faith belief that they could conduct a search pursuant to the warrant.

Petitioner did not raise this claim in the district court. See Pet. App. 16 n.4. The court of appeals noted this and rejected the claim both on the merits and because, regardless of the magistrate's authority, respondents were entitled under *Baker* to rely on the facially valid warrant for purposes of the arrest and the search. *Ibid.* Because the court of appeals was correct that respondents were entitled to rely on the facially valid warrant, the issue does not merit further review.[5]

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[5] Petitioner also alleges that the district court permitted irrelevant, prejudicial evidence to be presented to the jury (Pet. 21-22), but petitioner does not include any arguments based on these allegations as reasons for granting review in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

BARBARA C. BIDDLE
BRUCE G. FORREST
Attorneys

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